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United States
Department of
Agriculture

Food and
Consumer
Service

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Reply to
Attn. of: SP 99-03
CACFP-559
SFSP-353

Subject: State Agency (SA) Procurements with the National
Food Service Management Institute (NFSMI)

To: STATE AGENCY DIRECTORS - Colorado ED, Colorado DPHE,
(Child Nutrition Programs) Colorado HS, Iowa, Kansas,
Missouri ED, Missouri DH,
Montana OPI, Montana DPHSS,
Nebraska ED, Nebraska SS,
North Dakota, South Dakota,
Utah, Wyoming ED and
Wyoming DHSS

It has come to our attention there may be some misunderstanding regarding procurement requirements under the Child Nutrition Programs (CNP), specifically with regard to the use of noncompetitive procurement practices to secure services from the NFSMI. We would like to clarify policy in this area to ensure correct and consistent application of grant requirements.


A State must administer entitlement grants under the CNP, in accordance with the general rules found at 7 CFR Part 3015. Examples of these grant programs include the National School Lunch Program, the Child and Adult Care Food Program, and State Administrative Expenses. Part 3015 requires that grantees and subgrantees provide for maximum open and free competition in procurements under USDA entitlement programs. Section 3015.182 requires "all procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value shall be conducted in a manner that provides maximum open and free competition."

Non-entitlement grant programs, such as the Nutrition Education and Training Program and the Team Nutrition grants are administered in accordance with the general rules found at 7 CFR Part 3016. While Section 3016.36(a) authorizes a State to use its own procurement rules in lieu of those stated in Section 3016.36(b) through (i), State procurement policies also generally require competitive procurements and justification of sole source purchases.

The NFSMI is authorized by Section 21(e)(2)(C) of the National School Lunch Act to receive funding to implement dietary or nutrition initiatives through non-competitive Federal assistance awards from USDA. This authority in no way confers on the NFSMI a special status that would enable a State to obtain goods or services from the NFSMI by any method inconsistent with applicable Federal and State procurement rules.

In summary, a State's use of NFSMI's services under an entitlement program constitutes a procurement action under which competition is required by Part 3015. A noncompetitive negotiation is allowable, only with documented justification that meets the criteria in Part 3015. Procurements using funds covered by Part 3016 must be made in accordance with the contracting State's procurement rules.

If you have any questions, please contact our office at (303) 844-0355.


ANN C. DEGROAT
Regional Director
Child Nutrition Programs

for